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December 23, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 14, 2009

Case Number: TSO-0753

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual should not be granted an access authorization. 1/

I. BACKGROUND

The individual has been employed by a DOE contractor since 2007, and his employer has requested that he be provided with a DOE security clearance. In 2008, the DOE identified issues of concern relating to three of the individual's answers on a Questionnaire for National Security Positions that he completed in March 2008 (the 2008 QNSP) and concerning the individual's finances. In September 2008, the DOE conducted a Personnel Security Interview (the 2008 PSI) with the individual. DOE Exhibit 8.

In April 2009, the Personnel Security Manager of the DOE area office where the individual is employed (the Manager) issued a Notification Letter to the individual stating that certain matters

1/ Decisions issued by the Office of Hearings and Appeals (OHA), with names and other personal identifying information deleted, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine at <http://www.oha.doe.gov/search.htm>.

have created a substantial doubt regarding his eligibility for access authorization. DOE Exhibit 2. Enclosure 1 to this letter, which is entitled "Information Creating a Substantial Doubt Regarding Eligibility for Access Authorization," states that the individual's behavior has raised security concerns under Section 710.8(f) and (l) of the regulations governing eligibility for access to classified material (Criteria F and L).

With respect to Criterion F, Enclosure 1 states that information in its possession indicates that the individual has deliberately misrepresented, falsified, or omitted significant information from his 2008 QNSP. Specifically, it finds that he answered "no" to the following three questions in that document:

27(d) In the last 7 years, have you had judgments against you that have not been paid?

28(a) In the last 7 years, have you been over 180 days delinquent on any debt(s)?

28(b) Are you currently over 90 days delinquent on any debt(s)?

Enclosure 1 indicates that information from the individual's March 27, 2008 credit report (the 2008 Credit Report), and statements made by the individual at his 2008 PSI indicate that he should have answered "yes" to those questions.

Enclosure 1 also states that information in the possession of the DOE indicates a pattern of financial irresponsibility which tends to show that the individual is not honest, reliable or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of the national security, thereby raising a concern under 10 C.F.R. Section 710.8(l) (Criterion L) of the regulations. Specifically, it indicates that the individual's 2008 Credit Report lists as unpaid a 2002 court judgment and numerous financial accounts totaling \$17,411. It finds that additional collection accounts not appearing on the Credit Report amount to an additional \$1,669. Finally, the Notification Letter finds that on fourteen occasions at his 2008 PSI, the individual described his financial situation in a manner which raised a concern that he did not pay sufficient attention to his unpaid debts, or that he did not view the repayment of his debts as a serious responsibility. See Enclosure 1 to Notification Letter, DOE Exhibit 2.

II. THE SEPTEMBER 2009 HEARING

At the individual's request, a hearing was convened in September 2009 to afford him an opportunity to submit information to resolve these concerns. At the hearing, testimony was received from six persons. The DOE presented the testimony of the DOE security specialist who conducted the individual's 2008 PSI. The individual testified and presented the testimony of his wife, his son, his pastor, and his co-worker.

The hearing testimony focused on the individual's explanation for his inaccurate responses on his 2008 QNSP, and the individual's efforts to mitigate his financial issues.

III. APPLICABLE STANDARDS

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a presumption against granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing*, Case No. VSO-0002 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing*, Case No. VSO-0005 (1995), *aff'd*, Case No. VSA-0005 (1995). See also 10 C.F.R. § 710.7(c).

IV. ANALYSIS OF TESTIMONY AND FINDINGS

A. *The Individual's Statements About His Family's Unpaid Medical Debts and His Unpaid Court Judgment*

At the hearing, the individual testified that his unpaid court judgment and most of the delinquent debts listed on his credit reports are related to a worker's compensation claim against a former employer for an on-the-job injury that has remained unresolved for several years. TR at 259. He also testified that, in 2008, his wife was injured in a car accident, that she incurred significant medical expenses from the accident, and that her legal claim against the other driver has not yet been resolved. 2/

The individual stated that the attorney representing him in the worker's compensation action advised him not to pay any medical bills relating to his claim until the claim is settled. He stated that the attorney told him not to worry about these debts, and that he was not responsible for paying them. TR at 260.

The individual stated that the court judgment against him occurred because he refused to continue a leg therapy procedure that he did not believe was beneficial, and the medical provider sued him and obtained a court judgment against him. The individual testified that because he had moved out of the state where the court action was brought, he never received any court document regarding the judgment against him, and only learned of the judgment from a friend who resided in that state. TR at 212.

B. *The DOE's Criterion F Concerns*

The individual testified that he did not deliberately provide false answers to the three questions on his 2008 QNSP identified in the Notification Letter. The individual stated that he and his wife filled out the form hastily because their original copy had been lost, and they were feeling pressured to complete it. TR at 219, 220. He stated that he made a "mistake in judgment" but did not deliberately lie when he answered "no" to the question asking if there are any unpaid court judgments against him. He stated that he knew about the court judgment, but assumed that "it went away

2/ The individual's wife testified that she was involved in an August 2008 car accident, and letters from her attorney confirm that her claim has not been resolved, and that he has written to her medical creditors informing them that he would protect their financial interests. TR at 97, Individual's Exhibits 6A and 6B.

because nobody was knocking on my door or sending me a letter or calling me." TR at 318-319. I reject the individual's argument that his wishful thinking about the court judgment in any way justified his answering "no" to the QNSP question asking whether he has an outstanding court judgment. I find that the individual deliberately violated his obligation to answer that question on the DOE form fully and truthfully.

The individual testified that he answered "no" to the two QNSP questions concerning delinquent debts in the last seven years because, at that time, he and his wife were not aware that they had incurred delinquent debts. TR at 219. The individual admitted that he knew that he had unpaid medical bills relating to his 1998 on-the-job injury and worker's compensation claim. However, he stated that because his attorney told him not to worry about these debts, that the debts would be paid when his employer provided the money, he did not believe that they constituted delinquent debts that required affirmative answers on the QNSP form. TR at 227-228.

The individual's wife testified that she has been married to the individual for nine years and that, since their marriage, she has managed the family's finances. She stated that she believed that her husband had been advised by his attorney in his worker's compensation case to wait until the case was settled before he paid his related medical bills. TR at 90-91. She stated that other than the court judgment and the medical bills relating to the individual's worker's compensation claim, she and her husband were not aware of any outstanding debts until the DOE provided the individual with a list of unpaid creditors at his 2008 PSI. TR at 91-92.

I find that the individual has not supported his assertion that the attorney in his worker's compensation case advised him not to pay the medical bills connected with his claim. The letter from this attorney submitted in this proceeding states only that the individual's worker's compensation case "is still pending" and that "we are waiting for this case to be set for a hearing in front of the worker's compensation board." September 16, 2009 letter from the individual's worker's compensation claim attorney to his attorney in this proceeding, Individual's Exhibit 3. Under these circumstances, I cannot find that the individual was reasonably led to believe that his outstanding medical bills were not delinquent debts. Even if the individual had been advised not to pay his medical bills, the individual should have answered "yes" to questions 28(a) and 28(b) on the QNSP form, and provided an explanation for why he had not paid those debts. Accordingly, I find that the individual deliberately provided false answers to these questions.

False statements by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access

authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. See e.g. *Personnel Security Hearing*, Case No. VSO-0281 (1999), *aff'd*, Case No. VSA-0281 (2000) (terminated by Office of Security Affairs, 2000). However, if the individual demonstrates that the erroneous answers provided on his 2008 QNSP were an isolated event and unlikely to be repeated, the passage of time during which the individual demonstrates honesty and integrity eventually will mitigate the concerns arising from that instance of falsification. See *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, Guideline E, Paragraph 17(c) at <http://www.archives.gov/isoo/pdf/hadley-adjudicative-guidelines.pdf> (December 29, 2005).

At the hearing, the individual presented the testimony of his co-worker and his pastor concerning his honesty, reliability and trustworthiness. His co-worker stated that he has worked with the individual for about a year and eight months, and found him to be a very conscientious and trustworthy co-worker. He stated that when the individual borrows money from him, "he comes up with it right away and gives it back." TR at 63,64, 69. His pastor testified that he has known the individual as a parishioner for about three years, and that the individual tithes regularly and has been asked to preach on several occasions. He stated that the individual has been truthful "on everything he has ever dealt with me about." TR at 72-74. This testimony provides some support for the individual's assertion that he strives to be honest and reliable in his personal life. In addition, I find that at the hearing, the individual provided full, frank and truthful answers to the questions put to him by the DOE counsel and myself.

Nevertheless, I do not believe that the individual has mitigated the DOE's Criterion F concerns at this time. The individual's QNSP form, containing three false answers, was submitted on March 5, 2008, less than one year and seven months prior to the hearing in this matter. As recently as his September 2008 PSI, the individual's responses to questions about his overdue debts were vague and minimized the extent of his financial problems. Moreover, as discussed below, as of the date of the hearing, the individual had not yet demonstrated his reliability by resolving the outstanding debts identified by the DOE in its Notification Letter. The individual must demonstrate honesty for a substantial period of time, and fully resolve the DOE's financial concerns before he can mitigate his related Criterion F concerns.

C. Criterion L Concerns Regarding Financial Irresponsibility

The individual stated that he believes that in most respects he and his family have managed their finances responsibly in recent years.

He testified that he and his wife live within their means, and are committed to tithing to their church. TR at 211. 3/ He stated that his 1997 bankruptcy took place during his former marriage, and that his former wife's financial irresponsibility was a problem in that marriage. He asserted that his former wife continued to incur debts in his name, without his permission, after their separation and divorce. TR at 213. He stated that recently, with the help of his adult son, he established an account with Credit Keeper, a credit protection service, to protect his identity from being used fraudulently by his ex-wife and others. TR at 208, Individual's Exhibit 12.

The individual testified that until recently, his wife has managed all of the family finances. He stated that he did not know prior to his September 2008 PSI that there were unpaid bills in addition to the medical bills relating to his workman's compensation claim. He and his wife both testified that they never received any letters or phone calls from collection agencies concerning these unpaid bills. TR at 213-15, 92. He testified that after he was questioned about the his credit report at the 2008 PSI, he has become more involved in the family finances. TR at 215. His wife stated that she and the individual and his adult son are attempting to contact all of the delinquent account creditors listed on his March 2008 Credit Report, and that they have made full or partial payments to several of these creditors. TR at 89-109. The individual's Exhibit 4 consists of receipts from a debt collector indicating that between July 1996 and August 2009, the individual had paid a total of \$1,904 in overdue medical bills. The individual's Exhibit 5 indicates that in 2009, he made payments totaling \$50 on overdue medical bills to another debt collector. The individual's Exhibit 9 lists six creditors and their phone numbers under the heading "Accounts to be Satisfied".

The individual stated that at his 2008 PSI, he did not expect to be questioned about his finances, and because his wife handled the family finances, he was not prepared to discuss them. As a result, he stated that his responses gave the false impression that he was unconcerned about his debts. TR at 215-216.

3/ In this regard, I find that the hearing testimony and the information on monthly income and expenses submitted by the individual indicate that his family's monthly expenses do not exceed his monthly income. See Individual's Updated Monthly Budget submitted on October 5, 2009.

The individual testified that he now realizes that he needs to pay the court judgment against him, even though his workman's compensation dispute with his former employer has not been resolved. At the hearing, he stated that he would contact the court and begin to make payments on the outstanding judgment. In a post-hearing submission, his counsel indicates that the individual and his wife contacted the court, and have paid \$100 towards the April 2002 judgment of \$3,067. See October 5, 2009 email from the individual's counsel's legal associate to the parties, Enclosure 1 to Notification Letter at 2.

At the hearing, the DOE security specialist testified that he had reviewed a copy of the individual's September 18, 2009, credit report (DOE Exhibit 11), which documents the changes that have taken place in the individual's credit history since the March 2008 Credit Report, which served as the basis for concerns set forth in the Notification Letter. He testified that on the September 2009 credit report, there are eighteen or nineteen accounts in arrears, and that at least five new accounts totaling more than \$1,500 appear to have become delinquent since March 2008. TR at 55-56. He stated that all of the delinquent accounts on the September 2009 credit report total \$5,612, but that this amount does not include several components used to calculate the \$17,411 in overdue debts set forth in the Notification Letter. TR at 46-49. These components include the individual's unpaid court judgment, the collection accounts that appeared on the March 2008 credit report that were dropped from the September 2009 credit report because they were more than seven years old, and the collection accounts provided by CBM Account Service that did not appear on the March 2008 credit report. TR at 48, 54-56, 58. The DOE security specialist testified that based on the new delinquencies appearing on the September 2009 credit report, he believes that the individual's current overdue debts now total more than the \$17,411 set forth in the Notification Letter. TR at 49.

I find that the individual has failed to mitigate the DOE Criterion I financial concerns. I am not convinced that the recent efforts of the individual and his wife to begin to pay off these outstanding debts mitigate the DOE's concerns. The individual's debts arose primarily from his past medical expenses, and the DOE's Adjudicative Guidelines do provide that a factor supporting mitigation of a financial problem is a showing that the problem was caused by a condition such as an unexpected medical emergency that

was largely beyond a person's control. ^{4/} However, this showing must be coupled with other factors supporting mitigation. These other factors include showings that: (1) the individual acted responsibly under the circumstances when dealing with the financial emergency; (2) there are clear indications that the individual's financial problem is being resolved or is under control; and (3) the individual has initiated a good faith effort to repay overdue creditors or otherwise resolve his debts. *Id.* As discussed above, the individual's March 2008 and September 2009 credit reports indicate that he continues to have outstanding overdue debts relating to his unresolved workman's compensation claim, and there is no clear indication of when or how he will repay all of these debts. While he incurred these debts due to an unexpected medical emergency, they were incurred more than five years ago, and the individual already has had ample time to repay them. Based on the analysis provided by the DOE security specialist, I find that his family's recent efforts to make payments on his overdue debts have not yet reduced his overall indebtedness. ^{5/} To the contrary, unpaid medical bills relating to his wife's 2008 automobile accident have appeared on his September 2009 credit report. TR at 51. Finally, the individual has documented only a \$100 payment on his \$3,067 court judgment from 2002. Accordingly, I find that he has not met the Adjudicative Guidelines criteria for mitigating a financial concern.

Previous decisions issued by OHA Hearing Officers have held that once there is a pattern of financial irresponsibility, the individual must demonstrate a sustained, new pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely. *Personnel Security Hearing*, Case No. VSO-0108 (1996); *Personnel Security Hearing*, Case No. VSO-0240 (1999). After reviewing all

^{4/} See Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, Guideline F, Paragraph 20, at <http://www.archives.gov/isoo/pdf/hadley-adjudicative-guidelines.pdf> (December 29, 2005).

^{5/} In a post-hearing filing, the individual's counsel submitted documentation indicating that in addition to paying \$100 towards the individual's overdue court judgment, the individual's family paid an additional \$130 in overdue medical bills. See October 5, 2009 email from Individual's Counsel's Legal Associate to Hearing Officer. This rate of payment indicates that the individual will require a substantial amount of time to repay his family's overdue debts.

the evidence in the record, I find that the individual continues to have significant overdue debt, and that he has not yet made substantial progress in repaying his past debts or preventing his family from incurring new debt delinquencies. Under these circumstances, I conclude that the individual has not mitigated the Criterion L financial concerns identified in the Notification Letter.

V. CONCLUSION

For the reasons set forth above, I find that the DOE properly invoked Criteria F and L concerning the individual's eligibility for access authorization. After considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not mitigated the DOE's Criterion F concern relating to his failure to correctly answer three questions on his 2008 QNSP form. I further conclude that the individual has not mitigated the Criterion L concerns relating to the individual's failure to repay overdue debts. Accordingly, I cannot find that granting the individual an access authorization would not endanger the common defense and would be clearly consistent with the national interest. It is therefore my conclusion that the individual should not be granted an access authorization. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: December 23, 2009